

WETLANDS COUNCIL

MINUTES

May 8, 2018

The Wetlands Council met on Tuesday, May 8, 2018 in Rooms 112, 113, 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Lee Carbonneau, Jim Gove, Carol Henderson, Michael Klass, Deborah Lievens, Richard Mellor, Russ St. Pierre, Bob Wolff, Wendy Weisiger and Gretchen Young

Absentees: Councilor Prescott

Also present was: Carolyn Guerdet, Council Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 8:01 a.m. with introductions and a quorum present.

1. **Introduction**

2. **Approval of Minutes**

- ***Councilor Gove made a motion to approve the April 10, 2018 meeting minutes with correction, second by Councilor Carbonneau.***

3. **Public Input:** None

4. **Status of Appeals**

Chairman Kimball reviewed the following:

I. New Appeals

Docket No. 18-03 WtC – New Castle Conservation Commission Appeal

Subject: 1/16/18 approval of Wetlands Permit No. 2017-00487 issued to Marion Clough

Hearing Officer: Not assigned

Status: February 15, 2018 received Notice of Appeal. 2/20/18 issued Insufficient Appeal letter. March 21, 2018 received revised Petition for Appeal. 3/22/18 issued receipt of revised Appeal letter. April 10, 2018 received Appearance of Jonathan Springer for the permittee and a Motion for Summary Dismissal. 4/13/18 received Appearance of Nathaniel Morse for the appellant. 4/16/18 received Appellant's Objection to Motion for Summary Dismissal. Council to accept or dismiss Appeal today.

- ***Councilor Gove made motion to accept Appeal, second by Councilor Wolff and to deny Motion to Summarily Dismiss. Discussion was held. Motion passed unanimously.***

Docket No. 18-05 WtC – David and Beth Boucher, Trustees Appeal

Subject: 2/15/18 Administrative Order No. 18-004 WD

Hearing Officer: Not assigned

Status: February 26, 2018 received Petition for Appeal and issued Insufficient Appeal letter. March 22, 2018 received Revised Petition for Appeal. 3/26/18 issued receipt of revised Appeal letter. Council to accept or dismiss Appeal today.

- ***Councilor St. Pierre made a motion to accept Appeal, second by Councilor Henderson. Motion passed unanimously.***

Docket No. 18-06 WtC – Robert Carriagg Appeal

Subject: 2/22/18 Denial of Shoreland Application, File No. 2017-00618

Hearing Officer: Not assigned

Status: March 22, 2018 received Petition for Appeal. 3/27/18 issued receipt of Appeal letter. Council to accept or dismiss Appeal today.

- ***Councilor Gove made a motion to accept the Appeal, second by Councilor Lievens. Motion passed unanimously.***

II. Decisions that need to be written/finalized and issued.

III. Hearings or PHCs Pending

Docket No. 17-12 WtC (PNA) – Sullivan County Sportsmen, et al. Appeal

Subject: Denial of Application for Extension of Permit #2008-02781 issued to Dept. of Fish and Game

Hearing Officer: January 18, 2018 David Conley was appointed by AG

Recused Councilors: Carbonneau, Gove, and Henderson

Status: September 20, 2017 received Preliminary Notice of Appeal and Offer to Enter into Settlement

Discussions. November 3, 2017 received Notice of Appeal. 11/6/17 issued receipt of Appeal letter. 11/22/17 received Appearance of Allen Brooks and Motion to Dismiss for Lack of Standing. 11/29/17 received Assented to Motion to Extend Deadline. 11/29/17 issued Ruling Granting motion to Extend Deadline. December 7, 2017 received Appellants' Objection to Motion to Dismiss for Lack of Standing. 12/12/17 received Appellants' Motion to Strike. 12/14/17 received State's Objection to Appellants' Motion to Strike. 12/18/17 issued Ruling denying Motion to Strike. Council to accept or dismiss appeal. Discussion was held by Council. January 9, 2018 Council accepted the Appeal. 1/11/18 issued Ruling on Acceptance and Motion For Summary Dismissal. 1/16/18 received Motion for Reconsideration. 1/26/18 received Objection to Motion for Reconsideration. 1/29/18 received Reply to Appellants' Objection to Motion for Reconsideration. February 1, 2018 received Appellants' Response to Appellee's Reply to Appellants' Objection to Motion for Reconsideration. Hearing Officer to issue ruling on Motion for Reconsideration. April 17, 2018 issued Decision and Order granting State's Motion for Reconsideration.

Docket No. 17-13 WtC – Kelly Connolly, et al Appeal

Subject: 08/28/17 approval of permit #2017-01434 issued to Mark and Teresa Richey

Hearing Officer: February 26, 2018 David Conley was appointed by AG

Status: September 28, 2017 received Notice of Appeal. 9/29/17 issued receipt of Appeal letter. October 5, 2017 received Appearance of Russell Hilliard for the permittees. 10/17/17 received Motion for summary Dismissal. 10.27.17 received Reply and Objection to Motion for Summary Dismissal and Provisional Motion to Extend Time for Appeal. 10/31/17 Reply to Objection for Summary Dismissal and Objection to Provisional Motion to Extend Time for Appeal.. November 6, 2017 received Replication regarding Motion for Summary Dismissal and Provisional Motion to Extend Time for Appeal. 11/15/17 received Further Response to Appellants' Replication. Please note the Appeal appears to be untimely and in correctly addressed therefore, the Council may have to determine whether the Appeal was or was not timely filed. Discussion was January 9, 2018 Council declined to accept Appeal as untimely. 1/12/18 issued Ruling on Acceptance of Appeal and Motion to Summarily Dismiss. 1/18/18 received Appellants' Motion for Rehearing and reconsideration. 1/22/18 received Objection to Appellants' Motion for Rehearing and Reconsideration. February 13, 2018 Council granted Motion for Rehearing and Reconsideration. 2/16/18 issued Ruling on Motion for Rehearing and Reconsideration. March 7, 2018 issued Notice of Pre-hearing Conference scheduled for April 2, 2018 at 9 a.m. 3/13/18 received Permittees Motion for Rehearing and Reconsideration. 3/20/18 received Appellants' Objection to Motion for Rehearing and Reconsideration. 3/26/18 received Appellants' Witness and Exhibit Lists. 3/30/18 issued Ruling Denying Permittees' Motion for Rehearing and Reconsideration. April 2, 2018 issued Pre-hearing Order scheduling hearing for August 14, 2018 at 9 a.m. 4/6/18 received Permittees' Witness and Exhibit Lists. 4/30/18 received Appearance of Atty. Brooks.

Docket No. 17-16 WtC – Bryan and Linda Corr Appeal

Subject: 11/03/17 Administrative Order No. 17-028 WD

Hearing Officer: January 18, 2018 David Conley was appointed by AG

Status: November 30, 2017 received Petition for Appeal and Appearance of John Cronin. December 4, 2017 issued receipt of Appeal letter. 12/29/17 received the Appearance of Joshua Harrison for the Department. Council to accept or deny Appeal at their January 9th meeting. January 10, 2018 issued Appeal accepted letter. 1/25/18 issued Notice of Pre-hearing Conference scheduled for February 14, 2018 at 11 a.m. 2/14/18 issued Pre-hearing Order scheduling hearing for April 10, 2018 at 9 a.m. 2/22/18 received State's Motion to Dismiss. March 14, 2018 received Petitioner's Objection to Motion to Dismiss. 3/22/18 issued Notice of Rescheduled Hearing moving hearing to May 8th at 9 a.m. 3/28/18 received Assented-To Motion to Continue Deadlines. April 2, 2018 issued letter granting Assented-To Motion to Continue Deadlines. 4/11/18 issued Order granting in part and denying in part State's Motion to Dismiss. 4/30/18 received State's Witness and Exhibit List. May 2, 2018 received Appellants' Witness and Exhibit List. Hearing to be held today.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Docket No. 17-10 WtC – Patricia A. Rose Appeal

Subject: 06/15/17 approval of Wetlands Permit #2015-03134 issued to Frank and Laurie Leichthammer
Hearing Officer: Not Assigned

Status: July 14, 2017 received Petition for Appeal. 7/17/17 sent Insufficient Appeal letter. August 16, 2017 received Revised Petition for Appeal. 8/17/17 issued Receipt of revised Appeal letter. 8/30/17 received Appearance of Abigail Karoutas and Christopher Wyskiel for permittee and Motion for Summary Dismissal. October 6, 2017 received Response to Motion for Summary Dismissal. Council to accept or deny Appeal at their October 10, 2017 meeting. 10/10/17 Appeal accepted and denied the Motion for Summary Dismissal. 10/11/17 issue ruling accepting Appeal and Denying Motion for Summary Dismissal. 10/25/17 issued Notice of Pre-Hearing Conference scheduled for November 13, 2017 at 9 a.m. 11/7/17 received withdrawal of Abigail Karoutas and Christopher Wyskiel. 1/13/17 issued Pre-hearing Order scheduling Hearing for January 9, 2018 at 9 a.m. 11/20/17 issued Order on permittees' Motion for Summary Dismissal. December 1, 2017 received permittees' response on the Permittees' Response on the Permittee's Motion for Summary Dismissal and Request for Summary Judgment. 12/11/17 issued Order on Permittees' Response on Permittee's Motion for Summary Dismissal and Request for Summary Judgment. 12/13/17 received Permittee's Witness and Exhibit List. 12/18/17 received Appellant's Witness and Exhibit List. January 9, 2018 received Appearance from Mary Ann Tilton for the Department. Hearing was held on January 9, 2018 and continued until March 13, 2018 at 9 a.m. January 18, 2018 received Appellant's Witness and Exhibit List. Motion to Remand received on 1/23/18. 1/30/18 issued Ruling on Motion to Remand, which was granted. Appeal is stayed and continued hearing scheduled for March 13, 2018 is cancelled. February 8, 2018 received Motion for Reconsideration. February 20, 2018 received Response to Motion for Reconsideration. 2/21/18 issued letter denying Motion for Reconsideration. Appeal is stayed.

V. Misc.

Note: 15-12 WtC - Cook Appeal remanded back to Wetlands Council and back to Wetlands Bureau by Supreme Court.

5. New Business

- a. Steve Grady, Auditor Manager was here to review Council and Operations.

It is an audit over the 2016-2017 years. The scope of audit was reviewed and will be sent out to the Council. Field work is being done now with a report to be given in October 2018. Each person is going to receive a web based survey. Anyone can have a discussion with the auditors if they choose.

Issues: Inconsistencies

Findings: Disconnect with law/rule and what is transpiring at Agency/Council level.

Observations: formalizing what is found with suggestions for remediation.

Also review of Department issues that may impact Council indirectly. 1) Existing Rules 2) Inconsistencies 3) planning. Wetlands Council rules – inconsistencies to be remediated. Remands to the Department with useful recommendations as to which direction it is believed the Council should move. Any insights from the Council are welcome as they move forward.

Improvement needed with right to know requirements in 91-A. Concern is record of eligible members, quorum and posting minutes. Secretary of State's site and 15-A was discussed. It is advised to talk to legal counsel as to how to fix 2015 decisions. 2016 and 2018 had some noncompliance, policy and financial interests. Council members to insure themselves as to their compliance and the Council find a method to ensure compliance. An organizational chart is to be filed.

Reporting requirements were reviewed. Biennial and annual reports were discussed. Statutory report was known, the Governor's memo was unknown.

The observation will be written, formally transmitted to the Council, and a formal response is required. There will be an exit process and discussion will continue.

A non-public session is requested at the next meeting to discuss at detail.

6. Old Business

7. Next Meeting –

It was tentatively decided there will be no meeting in June, with July 10, 2018 being the next meeting at 9 a.m. and then August 14, 2018 at 8 a.m. with the Kelly Connelly, et al. Appeal at 9 a.m.

8. Adjournment

- ***Councilor Lievens made a motion to adjourn, second by Councilor Gove. Motion passed unanimously.***

Meeting adjourned at 8:57 a.m.

WETLANDS COUNCIL

HEARING MINUTES

May 8, 2018

The Wetlands Council met for
Docket No. 17-16 WtC – Bryan and Linda Corr Appeal Hearing
Tuesday, May 8, 2018 in Rooms 112, 113, & 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Councilors: Lee Carbonneau, Jim Gove, Carol Henderson, Chairman Chip Kimball, Michael Klass, Deborah Lievens, Richard Mellor, Wendy Weisiger, Robert Wolff, and Gretchen Young

Absentees: Councilors: Seth Prescott and Russell St. Pierre

Also present was: Carolyn Guerdet, Council Clerk

The Hearing was called to order by Hearings Officer David Conley at 9:15 a.m.

The Hearing closed at 4:16 p.m.

Deliberations to be held June 12, 2018 at 9 a.m.
